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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,515	02/04/2002	Steven Lederman	LED0001 CON	8409

7590 02/26/2008
Steven N. Lederman
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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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02/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN LEDERMAN

Appeal 2008-1295
Application 10/067,515
Technology Center 1700

Decided: February 26, 2008

Before BRADLEY R. GARRIS, CATHERINE Q. TIMM
and JEFFREY T. SMITH,, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

The above-identified application is hereby remanded to the Examiner,
via the Director for Technology Center 1700, for appropriate action
consistent with our comments below.

The record for this application reflects that, on June 23, 2004, an amended Appeal Brief was filed from the Examiner's final rejections of claims 21-60. Ultimately, on June 20, 2007, an Examiner's Answer was mailed in response to Appellant's Appeal Brief.

A number of the aforementioned final rejections were not listed in this Answer. Therefore, we presume these non-listed final rejections were implicitly withdrawn by the Examiner.

More importantly, the Answer contains a section entitled **"NEW GROUND(S) OF REJECTION"** (Ans. 6). In this Section of the Answer, claims 28, 30, 33-38, and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Saleeb et al. (U.S. Patent No. 5,028,446) in view of Andon et al. (WO 92/19251) and Andon (U.S. Patent No. 5,468,506) and Keating (U.S. Patent No. 5,500,232) (*id.*). This section of the Answer also includes a rejection of claims 43-60 under 35 U.S.C. § 103(a) "as being unpatentable over the above-combined references as applied to the above claims, and further in view of Andon (5,468,506)" (Ans. 8).

According to the electronic file record for this application, Appellant has failed to reply to the above-noted new grounds of rejections. Concerning this matter, the Manual of Patent Examining Procedure (MPEP) contains the following instructions at § 1207.03, V, C:

If Appellant fails to timely file a reply under 37 CFR § 1.111 or a reply brief in response to an examiner's answer that contains a new ground of rejection, the appeal will be *sua sponte* dismissed as to the claims subject to the new ground of rejection"

(p. 1200-39; Rev. 3, August 2005).

When less than all of the appealed claims are subject to new grounds of rejection to which no reply has been made, the previously mentioned section of the MPEP provides the following guidance:

If only some of the claims under appeal are subject to the new ground of rejection, the dismissal of the appeal as to those claims operates as an authorization to cancel those claims and the appeal continues as to the remaining claims. The examiner must:

(1) Cancel the claim subject to the new ground of rejection; and

(2) Notify the appellant that the appeal as to the claims subject to the new ground of rejection is dismissed and those claims are canceled.

The electronic file record for this application also reflects that the Examiner has failed to follow the above-discussed MPEP guidelines. In order to rectify this failure, we hereby remand the application to the Examiner. To the extent necessary or desirable, the Examiner's response to this Remand may include a Supplemental Examiner's Answer pursuant to 37 C.F.R. § 41.50(a)(2).

Appeal 2008-1295
Application 10/067,515

This application, by virtue of its “special” status, requires an immediate action; see MPEP § 708.01(D). It is important that the Board be promptly informed of any action affecting the appeal in this case.

REMANDED

PL initials:
sld

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